IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11024 of 2000,

SPECIAL CIVIL APPLICATION No 10985 of 2000
AND
SPECIAL CIVIL APPLICATION No 11066 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL DURLABHAI NATHAN & OTHERS

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioners
MR ND GOHIL, ASSTT. GOVERNMENT PLEADER for Respondent No. 1-3,4
NOTICE SERVED BY DS for Respondent No. 4
MR HS MUNSHAW for Respondent No. 5,7
RULE SERVED BY DS for Respondent No. 6,8-9

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 18/10/2004

COMMON ORAL JUDGEMENT

Since similar questions of law and facts arise in this group of petitions, they have been heard together and are being disposed of by this common judgement. In this group of petitions, the respective petitioners are complaining about the action of the respondent authorities in not releasing certain amounts from their retiral benefits with-held on the ground of over payment of certain allowances while they were in service. The petitioners who were employed by the Bhavnagar District Panchayat have filed these petitions contending inter-alia that they were entitled to receive Non Practising Allowance since there was a policy of the Government to grant such an allowance to the doctors employed in service. It is the case of the petitioners that they had fulfilled all the conditions for receiving such an allowance and were therefore, rightly paid the same while they were in service.

2. The petitioners have further stated that upon retirement the respondents did not release their retiral dues in full, but sought to recover the allowance paid to them under the heading of Non Practising Allowance while they were in service. They have therefore filed the present petitions challenging the action of the respondents.

3. On behalf of Bhavnagar District Panchayat, affidavit-in-reply has been filed contesting the claims of the petitioners. It is stated inter-alia that the petitioners were not entitled to receive the said allowances since they had not given the option in the prescribed form undertaking not to carry on private practice. It is contended on behalf of the respondents that the petitioners could not have received the Non-Practising Allowance while still continuing their private practice in the spare time.

4. In the petition the petitioners have however, suggested that in Bhavnagar District the communication/circular dated 12th Sept. 1988 was not brought to the notice of the Medical Officers and the District Panchayat did not obtain options from such officers. It is therefore suggested that non-giving of options could not be held against the petitioners in receiving the Non-Practising Allowance.

5. Learned Counsel Mr. Mangukia for the petitioners however, stated that the petitioners had in fact given such undertakings before the authorities and were

therefore, rightly paid the allowance. One may however note that in the petitions it is stated that the petitioners have not carried on private practice and monthly certificates to this effect have been given.

6. Mr. Munsha, learned Counsel for the respondent Bhavnagar District Panchayat has submitted that the petitioners had given undertaking that the outstanding recovery may be made from their pensionary benefits. In my view this however, would not permit the respondents to recover the amount in question, if otherwise such a recovery is not legal. I do not find that the undertakings given by the petitioners would come in their way in agitating that the recoveries were illegal.

7. Having noted the controversies between the parties, this group of petitions have been disposed of on the short ground that before deciding to recover the non practising allowance paid to the petitioners while they were in service, the respondents have not given any opportunity of being heard to the petitioners. Whether the recovery was justified or not, and if yes to what extent, can be ascertained only after hearing the petitioners. As noted above, number of disputes have been raised by the parties. Whether the petitioners were entitled to receive the said Non Practising Allowance and therefore rightly paid the same or not, can be decided only after hearing the petitioners in this regard and after taking into consideration their contentions. The authorities having taken a unilateral decision without involving the petitioners, their action cannot be sustained. Therefore, without expressing any opinion on the entitlement of the petitioners to receive and retain the non-Practising allowance, I am inclined to allow these petitions only on the ground of such adverse decisions having been taken without hearing the petitioners.

8. In the result, the petitions are allowed in part. The decision of the respondents to recover the non-Practising allowance paid to each of the petitioners is set aside and the respondents, in particular respondent No.7 is directed to decide the question of the payability of non-Practising allowance to each of the petitioners after giving them an opportunity of being heard, for which it will be open for the petitioners to make a representation within a period of 15 days from today. It is further directed that the respondent No.7 shall decide the question afresh within a period of 2 months after the receipt of the representations by the petitioners. Until such time the respondent No.7 takes a

fresh decision, status-quo as on today will be maintained.

9. In case the decision of the respondent No.7 is adverse to the petitioners, it will be open for them to challenge the same in accordance with law. Rule is made absolute in each matter with no order as to costs. Direct service permitted.

(Akil Kureshi, J.)

*/Mohandas